

ORDER NO. 2299

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;  
Mark Acton, Vice Chairman;  
Ruth Y. Goldway;  
Tony Hammond; and  
Nanci E. Langley

Competitive Product Prices  
Priority Mail Express & Priority Mail Contract 10  
(MC2012-54)  
Negotiated Service Agreement

Docket No. CP2012-66

ORDER APPROVING AMENDMENT TO  
PRIORITY MAIL EXPRESS & PRIORITY MAIL  
CONTRACT 10 NEGOTIATED SERVICE AGREEMENT

(Issued December 19, 2014)

I. INTRODUCTION

The Postal Service seeks to amend the Priority Mail Express & Priority Mail Contract 10 negotiated service agreement.<sup>1</sup> For the reasons discussed below, the Commission approves the negotiated service agreement as amended.

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<sup>1</sup> Notice of United States Postal Service of Amendment to Priority Mail Express & Priority Mail Contract 10, with Portions Filed Under Seal, November 25, 2014 (Notice). The Amendment is an attachment to the Notice (Amendment).

In Order No. 1499, the Commission approved the Express Mail & Priority Mail Contract 10 negotiated service agreement (Existing Agreement).<sup>2</sup> The Commission subsequently approved the Postal Service's proposed name change of Express Mail to Priority Mail Express.<sup>3</sup> Thus, the current name of the product is Priority Mail Express & Priority Mail Contract 10.

On November 25, 2014, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. The stated purpose of the Amendment is to clarify the definition of customer and extend the contract expiration date. Amendment at 1. On November 26, 2014, the Commission issued an order reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>4</sup>

On December 2, 2014, the Postal Service was requested to file additional information supporting the proposed amendment<sup>5</sup> and the comment deadline was extended to ensure an opportunity for commenters to review and comment on the Postal Service's response.<sup>6</sup> The Postal Service filed its response to CHIR No. 1 on December 5, 2014.<sup>7</sup>

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service asserts that the Amendment will not impair the cost coverage of the contract. *Id.*

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<sup>2</sup> See Docket Nos. MC2012-54 and CP2012-66, Order Adding Express Mail & Priority Mail Contract 10 to the Competitive Product List, October 11, 2012 (Order No. 1499).

<sup>3</sup> Docket No. MC2013-45, Order No. 1713, Order Approving Minor Classification Change, May 13, 2013.

<sup>4</sup> Order No. 2266, Notice and Order Concerning Amendment to Priority Mail Express & Priority Mail Contract 10 Negotiated Service Agreement, November 26, 2014.

<sup>5</sup> Chairman's Information Request No. 1, December 2, 2014 (CHIR No. 1).

<sup>6</sup> Order No. 2267, Order Extending Comment Deadline, December 2, 2014.

<sup>7</sup> Response of United States Postal Service to Chairman's Information Request No. 1, with Portions Under Seal, December 5, 2014 (Response to CHIR No. 1).

## II. COMMENTS

Comments were filed by the Public Representative.<sup>8</sup> No other person submitted comments. The Public Representative reviewed the Amendment, the Existing Agreement, the financial papers filed under seal, including the Postal Service's Response to CHIR No. 1. PR Comments at 2. Based on that review, she concludes that the Existing Agreement, as amended, should continue to generate sufficient revenues to cover costs and satisfy 39 U.S.C. § 3633(a) through the second year of the contract and that the mechanism for annual price adjustments included in the original contract should help meet the requirements of 39 U.S.C. § 3633(a) during the contract's last three years. *Id.* at 3.

The Public Representative did, however, express concern over the absence of financial information related to Priority Mail Express packages and suggested that the Commission request "clarification regarding the Priority Mail Express packages to be shipped under the contract." *Id.* at 4. On December 10, 2014, a second information request was issued seeking clarification regarding Priority Mail Express package volumes and updated financial workpapers demonstrating that Priority Mail Express packages are projected to cover costs in FY 2015.<sup>9</sup> The Postal Service filed its response to CHIR No. 2 on December 15, 2014.<sup>10</sup>

## III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, the comments filed by the Public Representative, and the Postal Service's responses to CHIR Nos. 1 and 2.

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<sup>8</sup> Public Representative Comments on Postal Service Notice of Amendment to Priority Mail Express & Priority Mail Contract 10, December 8, 2014 (PR Comments).

<sup>9</sup> Chairman's Information Request No. 2, December 10, 2014 (CHIR No. 2).

<sup>10</sup> Response of United States Postal Service to Chairman's Information Request No. 2, with Portions Under Seal, December 15, 2014 (Response to CHIR No. 2).

*Cost considerations.* The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

In Order No. 1499, the Commission found that the Existing Agreement complied with the provisions applicable to rates for competitive products. Order No. 1499 at 4. The Postal Service's Notice asserts that the Amendment will not impair the ability to comply with 39 U.S.C. § 3633. Notice at 1. The contract contains a price adjustment provision that does not hinder the likelihood that rates will cover attributable costs during subsequent contract years because the cost coverage is sufficiently high in the first year. Finally, the Postal Service's Response to CHIR No. 2 addresses the Public Representative's stated concerns regarding Priority Mail Express package volumes to be shipped under the contract.

The Amendment does not materially affect the underlying financial analysis of the Existing Agreement. Thus, the Commission finds that the Existing Agreement, as amended, comports with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

*Other considerations.* The Postal Service states that the Amendment shall become effective on the day after the date that the Commission completes its review. The Existing Agreement, as amended, is set to expire five years after the initial effective date unless, among other things, the mailer terminates the contract upon 90 days'

written notice, the Postal Service terminates the contract upon 180 days' written notice, or the contract is renewed by mutual agreement.<sup>11</sup>

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days of the termination of the Existing Agreement, as amended, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by zone associated with the amended agreement.

In conclusion, the Commission approves the Existing Agreement, as amended.

#### IV. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission approves the Priority Mail Express & Priority Mail Contract 10 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.
3. Within 30 days after the Existing Agreement, as amended, terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by zone associated with the contract.

By the Commission.

Shoshana M. Grove  
Secretary

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<sup>11</sup> Amendment at 2. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.